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15 Attorneys for Defendants
16 CITY AND COUNTY OF SAN FRANCISCO,
17 JUVENILE PROBATION DEPARTMENT, TIM DIESTEL,
18 OFFICER JACQUELINE SELINGER, OFFICER FRANCES TERRY,
19 SERGEANT ALBERT LEE, AND SERGEANT STEPHAN THORNE

20 UNITED STATES DISTRICT COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA

23 MARIE DOE, a minor, through her
24 mother and Next Friend, MELBA DOE,
25 on behalf of herself and all others
similarly situated,

26 Plaintiffs,

27 vs.

28 CITY AND COUNTY OF SAN
FRANCISCO, a public entity, the
JUVENILE PROBATION
DEPARTMENT OF THE CITY AND
COUNTY OF SAN FRANCISCO, a
department of the City and County of San
Francisco, TIM DIESTEL, Individually
and as Director of Juvenile Hall, SAN
FRANCISCO POLICE OFFICER
JACQUELINE SELINGER #1302, SAN
FRANCISCO POLICE OFFICER #1770,
SAN FRANCISCO POLICE SERGEANT
LEE #2171, SAN FRANCISCO POLICE
SERGEANT THORNE #2120, OFFICER
NEIL, and DOES 1-20, Jointly and
Severally,

Defendants.

Case No. C04-4914 MJ

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS THE COMPLAINT**

[PROPOSED] ORDER GRANTING IN PART,
DENYING IN PART MOTION TO DISMISS
Case No. C04-4914 MJ

1 Defendants City and County of San Francisco, the Juvenile Probation Department of the City
2 and County of San Francisco, and Tim Diestel moved to dismiss certain claims in the complaint for
3 failure to state a claim under Fed.R.Civ.P. 12(b)(6). The motion was briefed by the parties and heard
4 on April 26, 2005, by the Court, the Hon. Martin J. Jenkins presiding. Defendants were present by
5 and through counsel, Deputy City Attorney David B. Newdorf. Plaintiffs were present by and
6 through counsel John L. Burris and Julia Sherwin. After considering the briefing, the arguments of
7 counsel and the relevant authorities, for the reasons stated on the record, the motion is GRANTED IN
8 PART AND DENIED IN PART as follows:

9 1. DENIED as to Count I (42 U.S.C. § 1983);

10 2. DENIED as to Count II (municipal and supervisory liability under 42 U.S.C. § 1983);

11 3. DENIED as to Count III (California Constitutional claims) because the motion as to
12 this claim was withdrawn at the hearing without prejudice to Defendants' right to challenge this claim
13 at a later time;

14 4. GRANTED as to Count IV (California Civil Code section 52.1) damages claim based
15 on immunities set forth in Cal. Gov. Code §§ 844.6 and 820.2; with leave to amend.

16 5. GRANTED as to Count V (California Penal Code section 4030) without leave to
17 amend;

18 6. GRANTED as to Count VI (assault and battery) with respect to supervisors' vicarious
19 liability for damages, based on immunities set forth in Cal. Gov. Code §§ 820.2 and 820.8. with leave to
20 amend. Plaintiff must file amended complaint within 30 days of this order.
IT IS SO ORDERED.

21
22 DATED: 8/16/2005

23
24 
Hon. Martin M. Jenkins

25 U.S. District Judge

1 APPROVED AS TO FORM:

2 Dated: May 26, 2005

3 DENNIS J. HERRERA
City Attorney

5 By: _____ /s/
6 DAVID B. NEWDORF

7 Attorneys for Defendants
8 CITY AND COUNTY OF SAN FRANCISCO,
9 JUVENILE PROBATION DEPARTMENT, TIM
DIESTEL, OFFICER JACQUELINE SELINGER,
OFFICER FRANCES TERRY, SERGEANT ALBERT
LEE, AND SERGEANT STEPHAN THORNE

10 HADDAD & SHERWIN

12 _____ /s/
13 JULIA SHERWIN
14 Attorneys for Plaintiffs